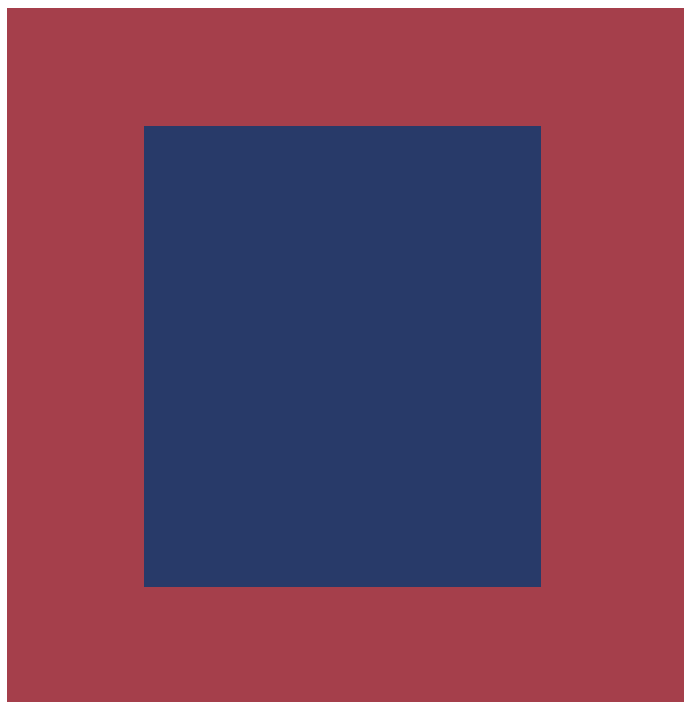


E-CONTRACT & E-COMMERCE

**An Analysis In Special Reference To
Online Transactions**



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MR. AMAN KOHLI

E-CONTRACT AND E-COMMERCE: AN ANALYSIS IN SPECIAL REFERENCE TO ONLINE TRANSACTIONS

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“Our personalities are based on the foundation of education imparted by one teacher who are next to God.”

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Dr. Vikasdeep Singh Kohli

DECLARATION

I hereby affirm and declare that this book on “E-Contract and E-Commerce: An analysis in special reference to online transactions” has been completed by me under the guidance and supervision of **Prof. (Dr.) R.K. Gupta** and embodies the original piece of work and has not been copied and submitted to any other university or institution.

My indebtedness to other works/publications has been duly acknowledged.

Dr Vikasdeep Singh Kohli

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CHAPTER -1

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Damages and compensation regarding law has garnered immense importance as far as the legal literature on online transactions in today's business environment is concerned. "Social justice" and "human rights" considerations have greatly enhanced the scope this issue and with the passage of time this scope will increase inevitably.

In general, the subject of damages is categorized into two categories: "Damages in torts" and "contractual damages". One more type of statutory damages embodied in welfare and social legislations like the Motor Vehicles Act (1988), the workmen's compensation Act (1923), fatal accidents Act, compensation in case of the Land Acquisition Act and the other enactments has been added. With advancements in computer technology, media transmission, and data innovation, the use of computers has grown significantly; they serve as conduits for electronic communication around the globe. Electronic exchanging in simple terms implies the use of computer system by individuals while trading accomplices by encouraging a correspondence. Additionally electronic exchange or transaction implies "those agreements which are entered between two lawful people alongside the guide of a computer program which goes about as an operator notwithstanding when it has no aware of its own yet in addition by starting it". An E-contract is an agreement demonstrated, executed and established by a product framework. Business forms that manage e-contracts are robotized by computer programmes. E-contracts can be used to map across connected initiatives, but these relationships must be explicitly stated to meet the requirements of the contract. These initiatives lack the capability to manage intricate linkages between gatherings to an e-contract. E-contracts are any agreements created during the course of online business through the interaction of at least two individuals using electronic tools, such as email, computer programmes, or other electronic specialists, or through the communication of at least two electronic operators modified to recognize the existence of an agreement. E-contracts also have the same requirements and remedies as traditional contracts. This is otherwise called electronic contract. Another concept known as E-Contracts or Electronic Contracts has been developed to strengthen the electronic commerce framework throughout the world in response to the changing demands of the times. Electronic trade can be characterized as "Electronic purchasing and offering on the Internet and incorporates every one of the exercises that a firm performs or offering and purchasing administrations and items utilizing computers and correspondence advancements. "The requirement and precondition for digital kind unsettlements basically be credited to the need for a speedy, effective and efficient way of contracting. The virtual internet as efficient and unbound by problems of separation offers an open door for gatherings to enter a settlement over web.

In the modern electronic era, the whole exchange can be completed within a moment, by the two parties just fastening their advanced marks to an electronic replica of the

contract. Thus, electronic mode of exchange reduces extra voyaging costs and requirement for postponed messengers. In a global business environment, gatherings are entering into several kinds of exchanges which may include controversial instruments, contracts representing the deal and buy of products, rent understandings, advance ascension and so forth. Therefore, electronic contracts are mandatory with a specific end goal to help electronic exchanges like ordinary exchanges, which works in a similar capacity and meet indistinguishable requirements from traditional mode of exchanges. This thesis mainly attempts to study and analyze the validity of e-contract and the rules and provisions under the ICA and IT act as well as it tries to enumerate the forms of e contract.

1.2 FRAMEWORK OF E-COMMERCE

As a consequence of continuous advancements in electronic, technological and scientific spheres, technologies diffuse rapidly, over the past two decades, in the contemporary world economy.¹The national and global information superhighways have given a new dimension to the concept of business or commerce by revolutionizing the means of accessing the market and increasing the speed of globalization. The modern technologies of e-commerce revolutionized the modern business world. Consequently, e-commerce technologies capture entire range of business processes that are continuously modified and redefined by leveraging the internet and its related technologies towards success. E-Commerce implies self-interest to link persons and processes. It facilitates trader, seller as well as customer to work simultaneously and automatically through website and an integrated value chain. In other words, e-commerce is a process to conduct business transactions parties or persons over the internet. It creates the new opportunities for customers around the world by enhancing efficiency, enlarging profits and delivering better customer services.²

More precisely, E-Commence is the online trading of goods and services on Internet. Information regarding costs and quality of a product is the life blood of its business. By inventing the new methods of transferring and possessing of information, it helps in conducting business on regional as well as global platforms. It involves utilizing ground-breaking new technologies to increase operational effectiveness and maintain or increase the lead over competitors. The practice of conducting business over the Internet, including not only purchasing and selling but also providing customer service and working with business partners, is known as e-business (Electronic Business). The term "e-business" refers to the use of systems, procedures, and management techniques that improve corporate competitiveness via the strategic use of electronic data. "It goes beyond e-Commerce by integrating e-Commerce tightly with business operations to improve performance, create value and enable new relationships between businessmen

¹ Bruce Kogut, "Introduction: The Internet has Borders" in Bruce Kogut (edited), The Global Internet Economy, Massachusetts Institute of Technology U.S.A., U.S.A., 2003, p.1.

²Vasu Deva, E-Business: Search for Excellence, Commonwealth Publishers, New Delhi, 2003, pp. 1-5.

and customers”.³The term "e-Business" refers to the use of information technologies for both internal business operations and activities that a company engages in during commercial activity, such as time cycle, speed, globalization, increased productivity, reaching new customers, and knowledge sharing across institutions for competitive advantage. With its focus on the transaction process, the word "e-Commerce" has a very limited meaning that does not include all of a company's applications.⁴

E-Commerce refers to any type of commercial transaction where the parties communicate electronically rather than through physical transactions or direct physical touch. E-commerce specifically refers to the application of information technology, communication technology, and information management competencies in business. It is the use of new technologies, particularly those related to the Internet and the Web, to assist people, businesses, enterprises, and other organizations in conducting business more effectively. E-commerce includes supply chain management, stock exchange, payment system, banking, taxation, and cyber law in relation to electronic transactions.⁵ The use of information technology for both internal business operations and activities that a corporation engages in during commercial activity is referred to as "e-Business. “These activities include those that are necessary for operation and financing.⁶The phrase e-Business includes the subset known as e-Commerce. E-commerce is a novel approach to organizing, administering, and carrying out commercial transactions with the use of contemporary information technology. Anytime, everywhere, and 24 hours a day access is now possible thanks to the Internet. The Internet is the primary technology, according to theory, that enables all aspects of a commercial transaction to be carried out interactively with multiple parties, without regard to time or space, in a multimedia (sound, image, and text) environment, at a relatively low cost while also enhancing competitiveness and efficiency through the redesign of traditional business. E-commerce is a type of business activity that utilizes computers, computer networks, or both.

1.2.1 Definitions of e-Commerce

E-Commerce is a “commerce based on bytes”. E-commerce is just a commercial exchange of services conducted electronically. E-Commerce, in general, can be defined as a business strategy that responds to the demands of businesses, traders, and customers to lower costs while delivering goods and services of higher quality and more quickly. It can also be used to describe the electronic data exchange and electronic funds

³Subhashis Datta, “e-Commerce: An Overview” in S.B. Verma (edited), Information Technology and Management, Deep and Deep Publications Pvt. Ltd., New Delhi, 2005, pp. 148-155.

⁴E. Turban, D. Kind, J. Lee, M. Warkentin and HM Chung, Electronic Commerce-A Managerial Perspective, Pearson Education Inc., Upper Saddle River, New Jersey, 2002, p. 22.

⁵ RE Rayport and BJ Jaworski, Introduction to e-Commerce, McGraw Hill Higher Education, New York, 2001, p. 4

⁶ P. Phillips, E-Business Strategy, McGraw Hill Higher Education. Maidenhead, Berkshire, 2003, p. 1.

transfer used to conduct business transactions without utilizing paper. E-commerce encompasses more than just straightforward data transfers; it also includes typical business activities including publicity, advertising, contract discussions, and fund payments. It refers to any types of commercial transactions involving both individuals and organizations that rely on the processing and transmission of digitized data, such as text, voice, and visual pictures. A single definition of e-Commerce is still elusive, despite the Internet's ability to facilitate new business transactions through its intricate telecommunications network. The concept of e-Commerce can be better understood with the following definitions:

Wigand defines e-Commerce as, “The seamless application of information and communication technology from its point of origin to its endpoint along the entire value chain of business processes conducted electronically and designed to enable the accomplishment of a business goal. These processes may be partial or complete and may encompass business to business as well as business to consumer and consumer to business transaction”.⁷

The World Trade Organization (WTO) Ministerial Declaration on e-Commerce defines e-Commerce as, “the production, distribution, marketing, sales or delivery of goods and services by electronic means which includes the six main instruments of e-Commerce that have been recognized by WTO are telephone, fax, TV, electronic payment and money transfer systems, EDI (electronic data interchange) and the Internet”.

1.2.2 Nature and Scope of e-Commerce: An Overview of New Online Market Space

In a broader sense, e-business is a mass market capability made possible by the interconnectedness of the Internet and the huge resources of conventional information technology (IT). It has many heads, a monster. Among the many commonly used names for e-Business, e-Commerce and e-Trade are the most well-known. Academicians sometimes try to differentiate between these terms. IBM defines e-Business as “a secure, flexible and integrated approach to deliver differentiated business value by combining the systems and processes that run core business operations with the simplicity and made possible by Internet technology.”

Time cycle, speed, globalization, increased efficiency, accessing new clients, and information sharing across institutions for competitive advantage are the core concepts of e-business. e-Business is defined as by A. Harrison and R.I. Van Hoek as “Trading with an organization’s suppliers and business customers, by electronic means”⁸. E-Business includes more than just e-Commerce. With its focus on the transactional process, the term "e-Commerce" has a relatively limited and confined definition. E-commerce is the term used to describe the buying and selling of goods as well as the electronic exchange of information and financial activities. You may consider E-Trade

⁷ R.T. Wigand, “Electronic Commerce: Definition, Theory and Context”, The Information Society, Vol. 12, No. 1, pp. 1-6.

⁸ Marla Manuela Cruz-Cunha & Joao Varajao, Innovations in SMEs and Conducting E-Business: Technologies, Trends and Solutions, IGI Global, USA, 2011, p. 144. Retrieved from